

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Friday, February 5, 1999 - 12:00 p.m. - Room 405 - State Capitol

Members Present:

Mr. Gayle McKeachnie, Chair (Via Telephone)
Mr. Alan L. Sullivan, Vice Chair
Rep. Afton B. Bradshaw
Justice Christine M. Durham
Mr. Dallin W. Jensen
Rep. David M. Jones
Mr. Morris Linton
Sen. Howard C. Nielson
Mr. Richard V. Strong
Dr. Jean Bickmore White
Mr. Kevin Worthen

Members Absent:

Ms. Diana Allison
President Lane Beattie
Rep. Melvin R. Brown
Sen. Mike Dmitrich
Mr. W. Craig Jones

Staff Present:

Mr. Jerry D. Howe,
Research Analyst
Mr. Robert H. Rees,
Associate General Counsel
Ms. Angela D. Kelley,
Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order and Other Business - Vice Chair Sullivan called the meeting to order at 12:16 p.m.

Vice Chair Sullivan stated that the purpose of this meeting is to review several resolutions proposing to amend the Utah Constitution.

2. Discussion of Resolutions Amending the Utah Constitution -

H.J.R. 7 - Retention of Judges Resolution, (K. Bryson) -

Rep. Bryson distributed handouts titled "1998 General Election Results of Judicial Retention Elections," and "Governor's Task Force on The Judicial Article." She explained that in the 1998 election results, almost every judge received more than an 80 percent approval rating on the judicial retention elections. She argued that when a judge is retained without an opponent, it is far too easy to get a simple majority of votes. She said that certain judges, even with local and national opposition, are easily retained in the Utah retention process. She argued that if judges like these cannot be removed in this process, then no judge will likely be removed by the retention election and the only conclusion is that Utah's judicial retention elections are without merit. Rep. Bryson said that the Legislature should be authorized to increase the percentage of votes required to retain a judge from a simple majority to up to sixty-five percent.

Vice Chair Sullivan said that a judge's record speaks for itself, their rulings are made in public, and it is a public process, but they cannot comment outside of that process.

Mr. Worthen said that the issue should be to make sure the public is aware of the information that is out there, so when they vote, it is not a meaningless vote.

Rep. Bryson said that the public is unaware of where to find this information. She also explained that most of the voting public will not do independent research when deciding whether or not to retain a judge. The presumption of the public favors the judge, she said, which is why some very poor judges are retained even with significant opposition. These factors indicate that a majority vote on an unopposed retention election is so simple to attain that the process itself is suspect, she said. Retention elections in this form do not function to remove poor judges as they were designed.

MOTION: Mr. Jensen moved not to approve H.J.R. 7, "Retention of Judges Resolution." The motion passed, with Sen. Nielson voting in opposition. Mr. Strong indicated that he would abstain from voting on all proposed resolutions based upon his role with the Legislature.

H.J.R. 1- Resolution Requiring Extraordinary Vote to Raise Property Tax (G. Way) -

Rep. Way distributed H.J.R. 1, "Resolution Requiring Extraordinary Vote to Raise Property Tax." He explained that this resolution requires a two-thirds vote of the Legislature before it may impose or increase a statewide real property tax except for bonding purposes. Rep. Way explained that Utah does not currently have a statewide property tax, and he argued that without a two-thirds vote of the Legislature, such a tax should not be implemented. He acknowledged that the resolution has little practical impact on the state, but it is philosophically sound because a decision to implement or raise a statewide property tax is an extraordinary event that should require an extraordinary vote.

Mr. Dale Okerlund, First Security Capital Markets, Inc., expressed some legal and financial problems with the resolution. One of those concerns, he said, is that there is a constitutional mandate to balance the budget. Not having authority to raise a statewide property tax could prevent a balanced budget, he said. Furthermore, although a super majority vote, under certain circumstances, has a legitimate purpose in a constitution, it is not justified in the current context because the tax in question is not even being levied.

Mr. Steve Peterson, Executive Director, Utah School Superintendents Association, and Associate Director, Utah School Boards Association, expressed concern with the two-thirds vote, which allows public policy to be decided on a minority vote of 34 percent instead of a majority

vote of 51 percent, he said. By limiting the possibility of a revenue source, the state's bond rating could be negatively impacted, and if that were to happen then it could cost school districts millions of dollars in interest charges.

Mr. Ed Alter, State Treasurer, said that rating agencies do not like self imposed restrictions, tax limitations, and super majority votes because it limits the ability of the Legislature in the future to respond to unforeseen circumstances. He said that the state received a good report card from a national business publication, and there were only two states that received as high a financial management rating as did Utah. This resolution is not a wise decision if you care what credit rating agencies think of Utah, he said.

Rep. Way said that government should be limited, and that the constitution is the way to limit it.

MOTION: Justice Durham moved not to approve H.J.R. 1, "Resolution Requiring Extraordinary Vote to Raise Property Tax." The motion passed, with Rep. Jones absent for the vote.

S.J.R. 6 - Resolution Requiring Senate Reconfirmation of Certain Judges (T. Spencer)

Sen. Spencer was unable to meet with the commission. Mr. Rees explained that S.J.R. 6 would require each judge of a court not of record to be subject to retention approval by the Senate every second year after the judge's selection.

Vice Chair Sullivan questioned whether one could accomplish this objective in statute rather than a constitutional amendment.

MOTION: Justice Durham moved not to approve S.J.R. 6, "Resolution Requiring Senate Reconfirmation of Certain Judges." The motion passed unanimously, with Rep. Bradshaw and Rep. Jones absent for the vote.

3. Staff update concerning Legislative action -

S.J.R. 5 - Resolution Amending State and Local Government Provisions (H. Nielson) -

Mr. Rees explained that S.J.R. 5, "Resolution Amending State and Local Government Provisions" had been amended in committee, and that when it went to the Senate floor, a motion was made to send it back to committee. The committee then deleted part of the amendment and sent the resolution back to the full Senate. It is awaiting further action by the Senate, he said.

Mr. Roger Tew, League of Cities and Towns, said that cities will not accept a proposal that diminishes the status quo. He said that the cities would be better served by what is currently in the constitution as to what is proposed in the resolution by way of the committee amendment.

H.J.R. 4 - Resolution Changing State Election Cycle (D. Zolman) - The commission did not discuss this item.

H.B. 21 - Constitutional Revision Commission Amendments (M. Styler) - The commission did not discuss this item.

Mr. Howe announced that the commission has been invited to attend House and Senate caucuses. He said that the caucuses have been scheduled for Tuesday, February 9, and that all members of the commission who wish to participate in those meetings need to meet in room 436 of the State Capitol at 12:30 p.m.

4. Adjourn -

The meeting was adjourned at 1:51 p.m.